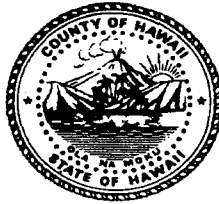


Harry Kim
Mayor

Roy Takemoto
Managing Director



Thomas Raffipiy, Chair
John Replogle, Vice Chair
Joseph Clarkson, Chair
Gilbert Aguinaldo
Donn Dela Cruz
Donald Ikeda

County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

FEB 24 2020

Vladimir and Nadezhda Zosim
73-1950A Kaloko Drive
Kailua-Kona, HI 96740

Dear Mr. & Mrs. Zosim:

SUBJECT; Special Permit No. SPP 19-000208
Applicant: Vladimir & Nadezhda Zosim
Permitted Use: Allow the Construction and Operation of an Adult Day
Care Facility
Tax Map Key: 9-2-084:048

The Windward Planning Commission, at its duly held public hearing on date February 6, 2020, considered the above-referenced request to allow the construction and operation of an adult day care facility on 1.001 acres of land in the State Land Use Agricultural District. The property is located on Lotus Blossom Lane in Hawaiian Ocean View Estates, approximately 200 yards from the intersection with Māmalahoa Highway, Ocean View, Ka'ū, Hawai'i.

Approval of this amendment is subject to the following amended conditions:

1. The applicants, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Construction of the proposed senior care facility and related improvements shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicants shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code. Plans shall identify all existing and proposed structures, signage, fire protection measures, all-weather dust-free driveway access and parking stalls, outdoor lighting (if any), and other

Hawai'i County is an Equal Opportunity Provider and Employer

FEB 24 2020

improvements associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise and visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Buffer and yard landscaping shall conform to the standards for separation of a residential zone from a commercial zone as provided for in Planning Department Rule No. 17.

3. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
4. The applicants shall provide fire department access and water for fire suppression to the property and senior day care facility to meet Fire Department requirements.
5. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
6. All earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.
7. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.
8. Construction activities must comply with the provisions of Hawai'i Administrative Rules, Chapter 11-46, "Community Noise Control."
9. The applicants shall install an individual wastewater system meeting with the requirements of the Department of Health prior to the issuance of a Certificate of Occupancy.
10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
11. The certified kitchen shall meet the requirements of Chapter 12, Food Establishment Sanitation.

12. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
13. An initial extension of time for the performance of conditions within the permit may be granted by the Director upon the following circumstances:
 - a) The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence.
 - b) Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - c) Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - d) The time extension shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

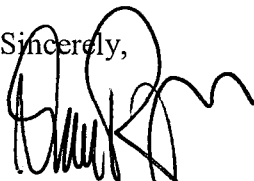
Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this Special Permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Jessica Andrews of the Planning Department at 961-8155.

Sincerely,



Thomas Rafanelli, Chairman
Windward/Leeward Planning Commission

Enclosure: PC Findings

cc: All Aina Services
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
State Department of Health
State Department of Transportation
State DLNR-HPD
Plan Approval Section
Mr. Gilbert Bailado

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

VLADIMIR AND NADEZHDA ZOSIM
SPECIAL PERMIT APPLICATION (SPP 19-000208)

Based on the following findings, Special Permit No. 19-000208 is hereby approved to allow the establishment of an adult day care facility on 1.001 acres of land in the State Land Use Agricultural District. The subject property is located on Lotus Blossom Lane in Hawaiian Ocean View Estates, approximately 200 yards from the intersection with Māmalahoa Highway, Ocean View, Ka'u, Hawai'i, TMK: (3) 9-2-084:048.

The applicants are requesting a Special Permit to allow the establishment of an adult day care facility for 6 seniors. The day care facility will provide a safe, friendly environment for older adults who need assistance or supervision during the day. The applicants are also establishing a senior care facility (group living facility) to provide residential services for 3 seniors. The senior care facility does not require a Special Permit since it is a permitted use for up to 8 people plus staff. To accommodate both the adult day care and the senior care facility, the applicants are proposing to build a new, one-story structure to include 3 bedrooms, 3 ADA-compliant bathrooms, laundry, certified kitchen, living room, garage and covered lanai. The proposed structure will consist of 2,128 square feet of interior space plus a 448 square-foot covered porch. The proposed use of the adult day care will operate from 7:00 am to 7:00 pm, 7 days a week. According to the applicants, the senior care facility may be expanded to include 2 additional bedrooms for senior residential services, dependent on the needs of the community. The owners, who will reside on a nearby parcel, will manage the adult day care and senior care facilities and plan to employ 3 to 4 full-time caregivers from the local community.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes (HRS), as amended. In recognizing that lands within Agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the Legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District. In addition, the State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

The subject property is a vacant 1.001-acre parcel and is not actively being used for agriculture, nor is there any evidence that the parcel was previously used for agriculture. The applicants propose to establish an adult day care facility on the subject property in the Hawaiian Ocean View Estates Subdivision. The land on which the proposed use will be located is classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map.

Additionally, the soil is classified as rLV (Lava flows, A'a). As a result, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

In addition to the above listed criteria, the Planning Commission considered the following criteria listed under Section 6-3(b)(5) (A) through (G) of its rules of practice and procedure:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The proposed use is considered an unusual and reasonable use of the agricultural land that will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

(B) The desired use would not adversely affect surrounding properties. Surrounding properties are zoned Agricultural (A-1a) and consist of scattered dwellings, commercial uses allowed by Special Permits, and vacant land. The nearest dwelling is located approximately 30 feet from the north property boundary. It is unlikely that a significant amount of noise or traffic will be generated by the proposed use. Additionally, the applicant has proposed constructing a parking area with 10 stalls on the subject property. Therefore, it is not anticipated that the requested use will adversely affect the surrounding properties.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the property from the Hawai'i Belt Road (Hwy 11) is via Lotus Blossom Lane. This is a private subdivision roadway that is owned collectively by the subdivision lot owners and maintained by the Hawaiian Ocean View Estates Road Maintenance Corporation. The Road Maintenance Corporation has not expressed concerns to the Planning Department about the proposed senior care facility getting access over this subdivision road. The applicants will install an individual wastewater system for wastewater and 4 approved water tanks for potable water delivery. They will also install a 15,000-gallon water catchment tank for fire suppression. Electricity and telephone service are available to the property. Police services are available about 15 miles to the east in Nā'ālehu and fire services are available about 2 miles from the property in Ocean View. Based upon the above, the proposed use will not burden public agencies to provide additional services.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. Since then the Hawaiian Ocean View Estates subdivision has become more residential in nature; however, the property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, various "non-agricultural" services may be allowed.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on land that has soils classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau's Overall Master

Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The property's soil type is A'a lava. Therefore, the land upon which the proposed use is sought consists of soils that are considered very poor and are not optimal for agricultural use.

(F) The use will not substantially alter or change the essential character of the land and the present use. The land is currently vacant of uses and structures. The character of the surrounding community is rural residential in nature. The proposed use will alter the character of the land, but it will not be a substantial change. The proposed adult day care facility will be developed in harmony with the existing rural character of the neighborhood.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The property is located in area identified as Rural in the General Plan. This category includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. The proposed use is considered a community facility for residents within the HOVE subdivision and surrounding areas. Thus, the proposed use is not contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area and would support the goals and policies of the Land Use and Economic elements of General Plan.

Land Use Element

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.
- Shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- Shall strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Shall encourage the development of a visitor industry which is consistent with the social, physical and economic goals of the residents of the County.

Approval of the request allows the applicants an opportunity to improve the quality of life in this area while providing a service to residents in the community.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to the coastal zone management program. The subject property is located over five miles to the nearest shoreline and therefore will not cause beach erosion or affect marine resources, coastal ecosystems, and coastal recreational opportunities. Nor will the property be affected by coastal hazards. Additionally, there is no designated public access to the mountain areas over the property. There is no record of traditional Hawaiian rights being practiced on the subject property. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

Lastly, this approval was made with the understanding that the applicants remain responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above considerations, the proposed senior care facility is an unusual and reasonable use of land in the Agricultural district and will promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes.